



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Possehn Consulting

File: B-278579

Date: January 9, 1998

Dennis Possehn for the protester.

Daniel N. Hylton, Esq., and Richard Salazar, Department of Agriculture, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that agency improperly rejected its price as unrealistically low is sustained because--absent technical evaluation criteria related to the concern about the protester's price--questions about a small business offeror's ability to perform at its proposed price in a fixed-price environment are matters of responsibility, the negative determination of which must be referred to the Small Business Administration.

2. Protest challenging the agency's evaluation of the relative strengths and weaknesses of the protester's proposal is denied where the evaluation was consistent with the stated evaluation criteria and reasonable.

DECISION

Possehn Consulting protests the award of two contracts--one to Steve Holmes Forestry and one to Shasta Land Management Consultants--by the Forest Service, Department of Agriculture, pursuant to request for proposals (RFP) No. R5-06-97-33, issued for the location and installation of permanent forest inventory plots in the Lassen, Plumas, and Tahoe National Forests.¹ Possehn argues that the agency improperly rejected its proposal on the basis that its prices were too low, and unreasonably rated the proposal slightly below those of the two awardees in the area of technical merit.

We sustain the protest.

¹The forest inventory plots anticipated here are widely-spaced, systematically located, large, fixed-size plots, permanently marked to permit the long-term observations necessary to monitor trends and changes in forest health and growth.

BACKGROUND

The Forest Service issued the RFP here on August 22, 1997, seeking fixed-price proposals for approximately 300 forest health inventory plots. The plots were aggregated into nine groups and offerors were to include a unit price for the plots in each group. The RFP anticipated award to the offeror whose proposal offered the best value to the government, based on the evaluation of price and technical factors, which were equally important. While the RFP included no criteria for the evaluation of price, it identified four technical criteria in descending order of importance: (1) experience establishing permanent forest and/or vegetation inventory plots; (2) past performance on similar contracts during the previous 3 years; (3) experience of key management personnel; and (4) qualifications of offered field personnel. RFP, Amend. 01, § M-1. The RFP also anticipated the possibility that the agency might make multiple awards. RFP § M-2.

After receiving 13 proposals, the agency evaluated each offer using a scale of A, B, or C, with A being the highest ranking. The agency also used pluses and minuses in some cases to indicate greater or lesser merit. The following table shows the ratings given to the proposals submitted by Possehn and the two awardees for each of the four technical evaluation factors:²

OFFEROR	Firm Experience	Past Performance	Management Experience	Field Personnel
Steve Holmes	B+	B	A	A
Shasta	B+	B	A	A
Possehn	B	B	B+	A

The contracting officer also performed a price analysis by comparing the proposed prices of each offeror with a government estimate. Using this approach, the contracting officer rejected the proposals submitted by Possehn and one other offeror on the basis that the prices were unrealistically low. Contracting Officer's Statement, Nov. 25, 1997, at 8.

After excluding the two lowest-priced proposals (including Possehn's), the contracting officer decided that the two proposals with the next lowest prices--the proposals of Shasta Land Management for items 1 through 3, and Steve Holmes Forestry for items 4 through 9--presented the best value to the government. Although there were other higher-rated offerors with higher prices, the award decision stated that "[n]o significant advantages could be gained by paying a higher

²The other 10 offerors also received relatively high ratings.

price." Contracting Officer's Award Statement, Oct. 14, 1997. Awards were made on October 16.

After Possehn received notice of the award decision, it filed an agency-level protest, which was denied, and received a debriefing. During this process, Possehn learned that its price was lower than the award price for every item but one. The table below shows Possehn's price and the award price (in bold) for each item:

ITEM NUMBER	Possehn Consulting	Steve Holmes Forestry	Shasta Land Management
1	\$97.50/plot		\$180/plot
2	\$135.20/plot		\$180/plot
3	\$89.50/plot		\$180/plot
4	\$183.60/plot ³	\$169/plot	
5	\$144.33/plot	\$179/plot	
6	\$150.00/plot	\$179/plot	
7	\$144.33/plot	\$189/plot	
8	\$125.67/plot	\$169/plot	
9	\$103.71/plot	\$169/plot	

Within 10 days of its debriefing, Possehn filed a protest with our Office and requested consideration of its protest under the express option procedures in our Bid Protest Regulations, 4 C.F.R. § 21.10 (1997). We granted Possehn's request.

DECISION

Possehn first argues that the agency could not properly reject its proposal on the basis that its prices were too low. We agree.

A determination that an offeror's price on a fixed-price contract is too low generally concerns the offeror's responsibility, *i.e.*, the offeror's ability and capacity to successfully perform the contract at its offered price. Cromartie Constr. Co., B-271788, July 30, 1996, 96-2 CPD ¶ 48 at 5; Envirosol, Inc., B-254223, Dec. 2, 1993, 93-2 CPD ¶ 295 at 5; Ball Technical Products Group, B-224394, Oct. 17, 1986, 86-2

³As the table shows, Possehn's price for item 4 was higher than the award price. The remainder of this decision will address whether Possehn should have been considered for award of items 1 through 3, and 5 through 9.

CPD ¶ 465 at 2. As part of the technical evaluation, an agency may assess the reasonableness of a low price to evaluate an offeror's understanding of the solicitation requirements, so long as the RFP provides for evaluation of offeror understanding as part of the technical evaluation. Cromartie Constr. Co., supra; Envirosol, Inc., supra.

In this case, however, there was no technical evaluation criterion or proposal requirement addressing an offeror's understanding of requirements. Instead, the RFP examined only experience, past performance, and personnel qualifications. This being so, the agency's concern about the reasonableness of Possehn's low prices could not be considered other than as a responsibility matter. Cromartie Constr. Co., supra; Envirosol, supra, at 6. Since Possehn is a small business, the agency was required to refer any finding of nonresponsibility to the Small Business Administration (SBA) for review. 15 U.S.C. § 637(b)(7) (1994); Federal Acquisition Regulation § 19.602-1(a); Cromartie Constr. Co., supra; Envirosol, supra. Accordingly, we sustain Possehn's challenge in this area.

Possehn also argues that the agency's evaluation of its proposal lacked a rational basis. For example, Possehn argues that the agency could not reasonably give its proposal a rating of B under the most important technical evaluation criteria--experience establishing permanent forest and/or vegetation plots--while awarding a B+ to the proposals submitted by Shasta and Steve Holmes. In this regard, Possehn complains that it has the same experience as Shasta, although it concedes that it was possible Shasta's description of its experience in the proposal was more detailed than Possehn's description.

In this procurement, the Forest Service was required to distinguish among 13 proposals, all of which--including the proposal submitted by Possehn--appeared to have significant merit. Our review of an evaluation conclusion like the one here is to ensure that it is reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450 at 7. Based on our review of the proposals submitted by Possehn and the two awardees, we see no basis for concluding that the evaluation was unreasonable.

Specifically, the Shasta proposal does, in fact, offer more detail on past projects of that firm than does Possehn's proposal. While Possehn may be correct when it claims there is little actual difference in the experience of the two firms, the agency was required to make its judgments about the relative merits of the two proposals (in this case, the relatively small distinction between a B+ and a B) based on the descriptive material in the proposals themselves. In our view, there was nothing unreasonable in the agency's reliance on the written proposals for this information, and there was nothing unreasonable about the distinctions that were made. See De La Rue Giori, SA--Recon., B-225447.3, June 15, 1987, 87-1 CPD ¶ 594 at 3 (regardless of how capable an offeror may be, technical evaluations are based on the

information included in its written proposal, which, if less comprehensive than other proposals, may not be selected for award).

In addition, the RFP expressly advised offerors that experience with permanent forest inventories would be ranked higher than experience with non-permanent forest inventories; and that forest inventory experience would be ranked higher than timber cruising experience. RFP § M-1. Since two of Possehn's previous projects were expressly described as timber cruising--the lowest-valued past experience according to the solicitation's evaluation scheme--and the other two involved forest inventory--but were unclear on whether the inventories were permanent or non-permanent--it appears that the slight distinction made in favor of the Shasta proposal clearly follows the evaluation scheme in the RFP, given the greater level of detail regarding past forest inventory efforts in that proposal.

As a second example, Possehn complains that certain details were omitted from the narrative description of its field personnel qualifications. Despite any omissions, however, the evaluation materials show that both it and the awardees received a rating of A in this area. Thus, our review shows that Possehn was not harmed by any such omission. Also, the ratings appear to have been consistently awarded since the proposals of the two awardees received an A rating for offering field personnel with qualifications similar to the qualifications of the personnel proposed by Possehn. In summary, our review shows nothing unreasonable about the evaluation of the relative strengths and weaknesses of these proposals.

RECOMMENDATION

Since the contracting officer's rejection of Possehn's proposal on the basis of its low price is a matter concerning an offeror's responsibility, and since the SBA has conclusive authority to determine the responsibility of small business concerns, we recommend that the agency refer the matter to the SBA for a final determination under the certificate of competency (COC) procedures. Alternatively, the contracting officer could, based on review of this decision, decide on his own to reverse the decision to reject Possehn's proposal based on its low price, which would obviate the need for a referral to the SBA. If the SBA issues a COC (or if the contracting officer on his own reverses the decision to reject Possehn's proposal), the agency should reinstate the proposal to the competition and perform a new cost/technical tradeoff, based on the RFP evaluation criteria, among the offerors. At the end of that process, if the contracting officer determines that Possehn's proposal offers the best value to the government, we recommend that the agency terminate the current awards and make award to Possehn.

We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys fees, if any. 4 C.F.R. § 21.8(d)(1) (1997). In accordance with 4 C.F.R. § 21.8(f)(1), Possehn's certified claim for such costs detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

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